HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 940 of 2006

Munna Lal Maurya

Vs.

State and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 02.08.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 940 (MS) OF 2006

Munna Lal Maurya,
S/o late Shri Roshan Lal,
R/o Sultanpur, Tehsil-Bazpur,
District-Udham Singh Nagar. .....Petitioner.

Versus

1. State of Uttaranchal, through Secretary Sehri Vikas (Urban Development), Dehradun, Uttaranchal.
2. Commissioner of Kumaon Mandal, Nainital.
3. District Magistrate, Udham Singh Nagar.
4. S.D.M. Bazpur, District – Udham Singh Nagar.

.....Respondents.

Dated: 02.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.S. Pal, Sr. Advocate, assisted by Sri V.S. Pal, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 2nd June, 2006 as well as the order dated 7th July, 2006.

Briefly stated, the petitioner is a Chairman of Nagar Panchayat Sultanpur, District; Udham Singh Nagar. The District Magistrate on 2nd June, 2006 passed the order against the aforesaid Nagar Panchayat by which it was directed that the entire construction work may be stopped immediately and the proceedings may be initiated accordingly.

Aggrieved by the aforesaid order, the petitioner preferred appeal before the Commissioner. The Commissioner has passed the order dismissing the appeal on 7th July, 2006.

The petitioner has submitted firstly that the G.O. dated 9th June, 2006 as well as G.O. dated 6th March, 2006 has not been followed by the District Magistrate while passing the impugned order, secondly the order passed by the District Magistrate has to be confirmed by the State Government before it attaches the finality.

A perusal of the provisions of the U.P. Municipalities Act i.e. Section 34 of the U.P. Municipalities Act, 1916 provides the power of the State Government or the Prescribed Authority or the District Magistrate to prohibit execution or further execution of resolution or order.

Sub Section (1) of Section 34 deals with the general powers of the prescribed authority prohibiting the execution. Sub clause (1-A) of Section 34 provides the power of the District Magistrate from prohibiting the doing or continuance by any person under the cover of such resolution or order. Sub clause (1-B) of Section 34 provides similar powers of the State Government. Sub-clauses (1-A) & (1-B) of Section 34 of the U.P. Municipalities Act are quoted below:-

"[(1-A) The District Magistrate may, within the limits of his district, by order in writing prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a [Municipality] or a committee of a [Municipality] or a Joint Committee or any officer or servant of a [Municipality] or of a Joint Committee if in his opinion such resolution or order is of a nature to cause or tend to cause danger to human life, health or safety, or a riot or affray, and may prohibit the doing or continuance by

any person of any act, in pursuance of or under cover of such resolution or order]

[1-B The State Government may, on its own motion or on report or complaint received by order prohibit the execution or further execution of a resolution or order passed or made under this or any other enactment by a [Municipality] or a committee of a [Municipality] or a Joint Committee, if in its opinion such resolution or order is prejudicial to the public interest, [or has been assed or made in abuse of powers or in flagrant breach of any provision of any law for the time being in force], and may prohibit the doing or continuance by any person of any act ion pursuance of or under cover of such resolution or order.]

Sub Clause (2) of Section 34 provides that the order passed under Sub Clause (1) or (1-A) of Section 34 shall be sent to the State Government, who may resend or modify the same. Sub-section (1) of Section 34 of the U.P. Municipalities Act is quoted below:-

> *"(2) Where an order is made under sub-section (1) or (1-A), a copy thereof with a statement of the reasons for making it, shall forthwith be forwarded by the Prescribed Authority or the District Magistrate through the Prescribed Authority, as the case may be, to the State Government which may thereupon, if it thinks fit, rescind or modify the order.]"*

Apart form sub section (1) of Section 34 and Sub-section (1-A) of Section 34, Sub-section (1-B) also deals with the power of the State Government on his own motion prohibiting the doing or continuance under the cover of such resolution.

The power of the District Magistrate and the Prescribed Authority, therefore, is subject to the confirmation of the State Government but the State Government passing the order on its

own motion or on the report or complaint has given finality and is not amenable to confirmation by the State Government.

Supplementary Counter Affidavit and Additional Supplementary Counter Affidavit have been filed on behalf of the State Government, where he has annexed the copy, which has been sent by the District Magistrate to the State Government containing the report on the basis of which the order has been passed by the District Magistrate, which reads as under:-

''अतः उपरोक्त गम्भीर अनियमिततओं के लिये जनहित में अध्यक्ष नगर पंचायत सुल्तानमुर/अधिशासी अधिकारी नगर पंचायत सुल्तानपुर एवं मुख्य लिपिक के विरूद्व नियमानुसार कठोर विभागीय कार्यवाही की जाय। साथ ही इन सभी से जो अब तक धनराशि का दुरूपयोग हुआ है उसकी वसूली की जाय। इसके साथ वर्तमान में हो रहे निर्माण कार्यों पर तत्काल प्रभाव से प्रतिबन्ध लगाया जाय। साथ ही यदि इस प्रकार की अनियमितता प्रकाश आने के उपरान्त भी किसी अधिकारी द्वारा निर्माण कार्यो की मानक/गुणवत्ता के सम्बन्ध में ठेकेदारों के भुगतान बिलों पर गलत प्रमाण पत्र अंकित किया जाता है तो उनके विरूद्व भी नियमानुसार कठोर कार्यवाही अमल में लायी जायेगी।

सक्षम अधिकारियों से उपरोक्त कार्यवाही हेतु अलग से पत्राचार करते हुए कार्यवाही की जाये तथा इस आदेश की प्रति जनपद के समस्त स्थानीय निकायों के अधिशासी अधिकारियों को इस आशय से प्रेषित है कि यह सुनिश्चित करें कि उनके निकायों में भी किसी प्रकार की अनियमितता न होने पावे।''

A perusal of the information sent by the District Magistrate to the State Government dated 6th June, 2006 shows that the order has been forwarded to the State Government, but no action has been taken. The petitioner has a grievance that unless and until, the same is confirmed by the State Government, the order passed by the District Magistrate shall not achieve finality.

The Standing Counsel has already submitted that in pursuance of the order passed under sub-clause (1-A) of Section 34 of the U.P. Municipalities Act, steps have already been taken and the papers have been forwarded to the State Government.

In view of that the State Government is directed to pass appropriate orders under Sub Clause (2) of Section 34 of the U.P. Municipalities Act, 1916 and since the matter has already been forwarded to the State Government, therefore, Commissioner has no jurisdiction.

However, it may be pointed out that even the order passed by the Commissioner, who exercises the power of the Prescribed Authority under Sub Section (2) (17) (ii) of the Act, is subject to the confirmation passed under sub clause (2) of Section 34 of the aforesaid Act.

In view of the aforesaid, order passed by the Commissioner while hearing the appeal is without jurisdiction.

However, the State Government is directed to pass the order under sub-Clause (2) of Section 34 of the U.P. Municipalities Act, 1916 and pass the order within a period of six weeks form the date of presentation of the certified copy of this order after hearing the petitioner.

Liberty is given to the petitioner to move an application for staying the operation of the order passed by the District Magistrate before the State Government. The petitioner shall also be provided an opportunity of submitting the documents before the State Government. However, for a period of two weeks, till the petitioner is given an opportunity to file the application before the State Government for staying the operation of the order, the operation of the order passed by the District Magistrate dated 2nd June, 2006 shall remain in abeyance.

Writ petition is disposed of. No order as to costs.

Copy of the order to be given within three days.

(Rajesh Tandon, J.)

02.08.2006
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